

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

**TIM ALAN GASS f/k/a TIM ALAN
WARNER,**

Plaintiff,

V.

KELDY HENDRICKS, CATHI
HARRIS, PATRICIA WILLIAMS, and
LESLIE SZIEBERT,

Defendants.

No. C11-5732 RJB/KLS

**ORDER DENYING MOTION FOR THE
APPOINTMENT OF COUNSEL**

This civil rights action has been referred to United States Magistrate Judge Karen L.

Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is Plaintiff's motion for the appointment of counsel. ECF No. 7. Having carefully reviewed Plaintiff's motion and balance of the record, the Court finds, for the reasons stated below, that Plaintiff's motion should be denied.

DISCUSSION

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). See also *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), overruled on other grounds, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional

1 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]
2 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal
3 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting
4 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he
5 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to
6 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
7 1101, 1103 (9th Cir. 2004).

8 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
9 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues
10 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further
11 facts during litigation. But, if all that was required to establish the complexity of the relevant
12 issues was a demonstration of the need for development of further facts, then practically all cases
13 would involve complex legal issues. *Id.*

14 Plaintiff filed his complaint *pro se* and has demonstrated an adequate ability to articulate
15 his claims *pro se*. This case is not complex. Plaintiff claims that Defendants have subjected
16 him to emotional and physical abuse in violation of the Eighth Amendment. ECF No. 4.

17 Plaintiff is requesting appointment of counsel because he is “special needs” and has been
18 diagnosed with “borderline intellectual functioning disorder.” He also states that he has not
19 understood any of the paperwork sent to him and had assistance in writing his letter requesting
20 the appointment of counsel. ECF No. 7. Based on the information submitted by Plaintiff,
21 however, the Court is unable to determine whether any such disabilities hinder Plaintiff’s ability
22 to adequately articulate his claims. He has set forth his claims clearly in his complaint. In
23 addition, the Court is aware that Plaintiff previously successfully participated in litigation against
24

1 the Special Commitment Center without the assistance of counsel. *See, Cappello, et al. v.*
2 *Seling*, C02-5242 RLB-KLS (ECF No. 346). If Plaintiff needs additional time to prosecute this
3 matter due to mental or physical constraints, he should provide the Court with documentation of
4 his medical conditions so that the Court may make a determination as to any additional time
5 and/or assistance that may be required in this case.

7 The Court finds no exceptional circumstances in this case. While Plaintiff may not have
8 vast resources or legal training, he meets the threshold for a *pro se* litigant. Moreover, Plaintiff
9 has not shown a likelihood of success on the merits.

10 Accordingly, Plaintiff's motion for the appointment of counsel (ECF No. 7) is **DENIED**.
11 The Clerk is directed to send copies of this Order to Plaintiff.

DATED this 18th day of October, 2011.

Karen L. Strombom
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United States Magistrate Judge